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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re

Sean Daniel Schrader,

Debtor.

Vincent Wurster, an individual and
Tina Elston, an individual,

Plaintiff.

vs.

Sean Daniel Schrader,

Defendant.

Chapter 13

Case No. 17-30928-dwh13

Adversary Proceeding
No. 17-03086-dwh

DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT OF DISMISSAL OF PLAINTIFF'S
COMPLAINT WITH PREJUDICE

COMES NOW Defendant above-named, by Laura L. Donaldson, his attorney, and moves for summary judgment of dismissal with prejudice with respect to the Complaint filed in the above-entitled adversary proceeding. This motion is based upon the Declaration of Laura L. Donaldson, Counsel for Defendant, concise statement of facts and supporting memorandum filed contemporaneously herewith.

DATED: August 30, 2017.

/s/ Laura L. Donaldson
Laura L. Donaldson, OSB# 022930
Attorney for Defendant

cc: Eric Helmy, Esq.

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Chapter 13

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DECLARATION OF LAURA DONALDSON
IN SUPPORT OF DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT OF DISMISSAL OF
COMPLAINT WITH PREJUDICE

COMES NOW Laura L. Donaldson, attorney for Defendant, and files this Declaration in support of Defendant's Motion for Summary Judgment of Dismissal of Plaintiff's Complaint with Prejudice.

1. Declarant is of counsel for Defendant and makes this Declaration based upon facts and circumstances known to me and which are a matter of Court record in the above-entitled adversary proceeding and related Chapter 13 case.
2. Defendant filed a Chapter 13 bankruptcy petition on March 16, 2017.
3. On March 19, 2017, the Clerk of the Court issued its notice to parties in interest

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designating a hearing and examination of the Chapter 13 debtor pursuant to §341(a).

4. Plaintiffs Vincent Wurster and Christine (Tina) Elston and their counsel, Mr. Eric Helmy were duly scheduled as claimholders in Defendant's bankruptcy petition. Defendant listed the debts to Wurster and Elston as disputed. They received both constructive and actual notice of the above-referenced Clerk's notice, which part relevant to this Motion set June 12, 2017 as the last day upon which a party in interest could commence an action challenging the Debtor's right to a discharge under 1328(f) or to dischargeability of a debt by filing a Complaint for such relief with the bankruptcy clerk's office.

5. On April 25, 2017, Counsel for Plaintiffs objected to confirmation of Defendant's Chapter 13 Plan (Dkt No. 14). This Court denied the objection and granted confirmation entering the Order Confirming Plan on May 4, 2017 (Dkt No. 17).

6. The records of the Bankruptcy Court evidence that Plaintiff's complaint was filed on July 10, 2017.

7. The Court's docket for this adversary proceeding further evidences the initial filing of Plaintiff's Complaint on July 10, 2017.

8. Defendant filed and served his Answer to the Complaint, which incorporated his affirmative defense based on Plaintiffs' untimely commencement of this adversary proceeding.

9. I communicated with Counsel for Plaintiff regarding this matter on July 26, 2017. Counsel reported a docketing error in his office resulting in the missed deadline for timely filing a complaint herein. I have had no further communications with Plaintiff's Counsel.

10. Plaintiffs have not sought an extension pursuant to Bk. Rules 4004 or 4007 (c) of the time limit for commencement of this adversary proceeding. Plaintiffs' also failed to appear at the designated pre-trial conference to discuss furtherance of their position with the Court with respect to the Complaint.

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11. Plaintiffs adversary proceeding is untimely. There are no facts or circumstances which would mitigate such untimely commencement, and that Plaintiffs' Complaint must be dismissed as a matter of law.

12. I declare under penalty of perjury under the laws of the State of Oregon that the foregoing is true and correct.

DATED this 30th day of August, 2017.

/s/ Laura L. Donaldson
Laura L. Donaldson, OSB# 022930
Attorney for Defendant

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